



# Policy

## Show Cause Proceedings - Section 64 of the Act

### Disclaimer

This Policy is designed to provide information in regard to the subject matter covered, and with the understanding that the Director of Liquor Licensing is not passing legal opinion or interpretation or other professional advice. The information is provided on the understanding that all persons undertake responsibility for assessing the relevance and accuracy of its contents.

## Introduction

Section 64 of the *Liquor Control Act 1988* ('the Act') provides that the licensing authority may impose, vary or cancel a condition of licence of its own motion; on the application of the licensee; or at the written request of the parties to a liquor accord.

Section 64(2a) requires that where the licensing authority proposes to impose, vary or cancel a condition on its own motion, by notice in writing, it may require the licensee to show cause why the condition should not be imposed, varied or cancelled.

This Policy provides guidance as to the process that will be followed where the licensing authority proposes to impose, vary or cancel conditions on a licence on its own motion.

## Legislative provisions

Section 16 of the Act provides power to the Director of Liquor Licensing ('the Director') to conduct or arrange hearings, meetings, consultations, and negotiations as the Director thinks fit, at such times and places as the Director may appoint.

Additionally, under section 13(5) of the Act, the Director may determine any matter without conducting a hearing, but where it is decided to conduct a hearing, the Director will —

- fix a time and a place for the hearing; and
- cause notice to be given to the applicant and to any other person interested in the application or matter to be heard,

and a person so given notice shall be entitled to attend the hearing and to be heard.

Section 64 of the Act specifically empowers the licensing authority to impose conditions on a licence —

- (a) in addition to the conditions specifically imposed by the Act; or
- (b) in such a manner as to make more restrictive a condition specifically imposed by the Act.

Section 64(3) is more specific and outlines some of the reasons why, in the public interest, conditions may be imposed.

A condition imposed under section 64 may relate to —

- (a) any aspect of the business carried on under the licence; and
- (b) any activity carried on at the licensed premises, at any time and whether or not related to the business carried on under the licence.

## Proceedings

Where the Director is considering the imposition of a more restrictive condition on a licence, other than as a result of a complaint substantiated under section 117 (complaints about noise or behaviour related to licensed premises), a notice will be served on the licensee outlining the condition proposed and giving the licensee an opportunity to demonstrate why the condition(s) specified in the notice should not be imposed on the licence.

Determination may occur —

- (a) on the papers (ie. in writing); or
- (b) by way of a hearing before the Director.

The decision as to the most appropriate process in a particular case, is determined by the Director.

A 'show cause' notice can be served on the licensee —

- (a) personally;
- (b) by leaving it at the licensed premises, in an envelope addressed to the licensee, with a person apparently employed or engaged in the business conducted under the licence;
- (c) by sending it by post addressed to the licensee at the licensed premises; or
- (d) by sending it by post or email to an address notified by the licensee to the Director.

Where a notice has been served on the licensee in accordance with these provisions and no response is received from the licensee, the condition may automatically be imposed on the licence.

However, if the licensee wishes to make submissions on the matters contained in the notice, the licensee may make those submissions —

- (a) in person;
- (b) represented by legal counsel;
- (c) if the party is a member of an association which the licensing authority recognises as having been formed to promote or protect the interests of a section of the liquor industry, or of employees in the liquor industry — represented by an officer or employee of that association;
- (d) if the party is a body corporate — represented by an officer or employee of the body corporate who has obtained leave of the licensing authority to appear on its behalf; or
- (e) represented by any other person approved by the licensing authority.

The Act requires that each party to such a proceeding is to be given a reasonable opportunity to present its case, and in particular, to inspect all relevant documents and to make submissions in relation to those documents.

## Practical Operation

The decision to impose, vary or cancel a condition on a licence would usually arise after some negative characteristic of the licensed premises is brought to the attention of the licensing authority. An inspector may be requested to investigate and report on the matter, however, inquiries can be motivated by a number of factors and as a consequence of information being presented to the Director.

The report of the inspector, and in particular any recommendation(s) made by the inspector, may be used as the basis of any decision to impose condition(s) on a licence.

Given that —

- (a) the inspector is acting as the Director's delegate; and
- (b) the licensing authority is not bound by legal rules relating to evidence or to legal forms, solemnities or procedure, but rather must simply have regard to the requirements of justice,

the inspector's report will generally be accepted as a matter of record. As such, the cross-examination of the inspector concerned will not be allowed. However, the conclusions drawn by the inspector are subject to any submission(s) the licensee may wish to make.

Where the Commissioner of Police reports a matter regarding a licensed premises to the Director for consideration under section 64 of the Act, the Department shall rely on the information provided by the Commissioner without requiring further investigation by an inspector.

## **The purpose of such procedures**

The show cause procedure will establish whether a condition should be imposed, varied or cancel after considering:

- (a) the evidence presented by all parties to the proceedings;
- (b) the inspector's report and any recommendations contained therein; and
- (c) any other relevant information contained on the Department of Racing, Gaming and Liquor's official file relating to the premises, including any correspondence from or on behalf of the licensee.

As such, the purpose of a section 64 'show cause' proceeding is primarily to allow the licensee (and any other party to the proceedings) to be given a reasonable opportunity to present any reason(s) why the imposition, variation or cancellation of conditions should not occur.

In this regard, the licensee may wish to highlight any mitigating circumstances, changes to procedures that have been instigated in order to address the problem(s) identified, or to take issue with any conclusion reached by the inspector.

## **Review Procedures**

After giving the licensee the opportunity to make submissions, the licensing authority may still decide, on the balance of probabilities, that it is in the public interest to impose, vary or cancel a condition on the licence.

Where a licensee is dissatisfied with that decision, section 25 of the Act provides for the decision to be reviewed by the Liquor Commission.

**DIRECTOR OF LIQUOR LICENSING**